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TUBAL LITIGATION: ABORTION BANS ACROSS THE UNITED STATES

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I've driven to Tallahassee, Florida, plenty of times. From a young age, I remember seeing anti-choice billboards. God loves you. They were everywhere. A few hundred feet would pass by on the road. Alligators on the asphalt. Sapphire blue lakes. Choose life. Another few hundred feet would pass. The lakes turned into trees. The alligators, well, the alligators never changed. Nor did the billboards. If you get an abortion, you're going to Hell.

It really makes you wonder about the separation of Church and State that supposedly governs the nation.

Seeing those billboards was awful as a child. They still are. They should not be around, and they only serve to push a harmful narrative that demonizes the right to choose that should be available for everyone with a uterus. Those billboards push the narrative, especially in the southern and mid-western united states, that demonizes abortion. They're not new, either.

For almost fifty years, abortion laws in the United States were held in check by *Roe v. Wade* (1973). Before the United States Supreme Court reversed this precedent in 2022, *Roe v. Wade* generally protected abortion rights across the United States by arguing that the right to abortion was protected by the right to privacy. *Roe* was reversed in *Jackson v. Dobbs*, a Supreme Court case in 2022 that opened the doors for states to enact outright bans on abortion. Even before the *Dobbs* decision was released, many states created trigger bans that were designed to come into effect as soon as *Roe* was overturned. These ranged from banning abortion altogether or at six weeks or twelve weeks.

To look at a current breakdown of state-by-state abortion bans and protections, visit: <https://www.guttmacher.org/state-policy/explore/overview-abortion-laws>

FLORIDA

Florida has found itself in the news a lot lately. From devastating hurricanes in 2022 to discriminatory decisions that attack marginalized communities, it is easy to lose track of everything occurring. This includes what is going on with abortion.

Currently, Florida's abortion ban time-line is up in the air. A six week abortion ban was signed into law by Governor Ron Desantis in April. However, this ban is being blocked because of a court case that is challenging the fifteen week abortion ban that is currently in place.

This case involves the constitutional right to privacy. The plaintiffs involved are arguing that the ban "violates the state constitution," according to the ACLU. Not only does the fifteen week ban violate the right to privacy, which is a right that has been upheld before. In *Re TW 551 So. 2d 1186 (1989)* held up the right to privacy for a minor, and declared that the parental consent statute was illegal, thus strengthening protections for abortions. The right to privacy does not just govern abortion rights. In the case of *Florida Bar v. Went for It, Inc., 515 U.S. 618 (1995)*, "direct mail attorney solicitation within 30 days of an accident" was banned. Although this case has nothing to do with abortion, it sets a precedent to the case that is currently going before the Supreme Court: the court has ruled in favor of the privacy law before.

That is not to say that Florida's courts have always ruled in favor of abortion when considering the privacy clause. In 2015, an abortion provider in Florida filed an injunction against a piece of legislation that had been passed by the state that created a twenty four hour waiting period before people seeking an abortion could get one. In the legal sense, an injunction is a judicial order that prevents an individual from continuing to harm the rights of another person. The injunction filed in this piece case was to prevent lawmakers from harming the rights of individuals to access necessary abortion procedures, as the law was actively harming people who needed medical care from receiving it. In 2018, a Florida court upheld this injunction, stating that the law was unconstitutional as it actively violated the right to privacy.

However, by 2019, the decision was appealed by the state, and the decision was reversed. Finally, in 2022, a Florida court ruled that the law was constitutional.

Because of this reversal, some abortion clinics in Florida have been fined hundreds of thousands of dollars. One such clinic in Orlando—the only independent abortion clinic in the area—was fined almost 200,000 dollars because of this law. Thankfully, efforts from Stand With Abortion Now (S.W.A.N.), Orlando Democratic Socialists of America (ODSA), and multiple local young Democratic Socialists of America chapters pushed to raise funds in the area to fully pay off the cost of the fines, and were successful.

The stories from individuals who have been denied the right to an abortion because of current laws are only growing in number. One woman, Deborah Doberts, was unable to access an abortion because of these laws, according to a CNN report. Her child was born without kidneys, dying within minutes, and had a limited amount of amniotic fluid in the womb. It was because of the current abortion restrictions in Florida that she had to carry a fetus for thirteen more weeks that would not survive. Doberts herself said that she was left with anxiety and depression because of the scenario.

Ninety four minutes. That was how long Doberts had to suffer through watching her child die, let alone the thirteen weeks of carrying a child that would die. It was agonizing for her.

These laws are draconian. They are torture. Horrific.

Yet, people across the state are not waiting for the decision to come from the courts to take action. A ballot initiative, started by Floridians Protecting Freedom, is aiming to get abortion protected. Across the state, people are collecting these petitions, getting them signed, and attempting to get abortion on the ballot.

Since the year 2000, out of the seventy five amendments presented, fifty five passed. Some of the failed initiatives include initiatives that sought to ban universal healthcare and one that would have “required all voter-approved constitutional amendments to be approved two elections in a row before going into effect.” There is hope for this initiative. And a lot of it.

Florida is not the only state with an initiative like this. Ohio is doing something similar, after successful initiatives have passed in the United States to protect abortion rights. Recently, there was a Republican-backed initiative that “would have made it more difficult to change the state’s constitution,” says the Associated Press, ahead of an amendment proposal this coming November. This initiative aims to set the right for citizens of Ohio “to make and carry out their own reproductive initiatives,” including abortion, according to the Ohio Capital Journal.

TEXAS

Texas offers a different picture of what is happening for individuals seeking an abortion. Currently, abortions are banned after six weeks, and as of September first, the only exceptions to this rule are for ectopic pregnancies or instances in which a person’s uterus ruptures while they are carrying the fetus. Still, under these guidelines, “Texas law says doctors who provide abortions under these circumstances could still be arrested or prosecuted by the state. If taken to court, doctors would have to prove the care they gave was specifically to treat one of these two conditions, known as an affirmative defense — a framework critics describe as ‘guilty until proven innocent,’” according to nineteenth news.

Yet, both maternal mortality rates and infant mortality rates are going up in Texas. According to a 2022 study about maternal mortality in Texas done by the state’s Maternal Mortality and Morbidity Review Committee, there has been a sharp increase in maternal mortality.

Another study entitled “Trends in State-Level Maternal Mortality by Racial and Ethnic Group in the United States,” produced by Laura G Fleszar, MPH, et al, explains that 90% of the deaths may have been preventable. These deaths primarily affect Black women, with Texas displaying “one of the highest increases in deaths among Black individuals during that time period,” stated Oriana González.

Infant mortality rates are going up as well. According to Fleszar et al’s study, “[m]ultiple obstetrician gynecologists who focus on high-risk pregnancies told CNN that Texas’ strict abortion laws likely contributed to the uptick in infant deaths.”

The abortion surveillance laws that were signed into place in Texas contributed. In 2021, a bill in Texas came into effect that is essentially a vigilante-enforced ban on abortion care. It was bounty hunting in the modern day. It allowed for people “to sue someone for providing care or helping a pregnant person access care after about six weeks in pregnancy and be rewarded \$10,000 or more,” according to NARAL. These people do not have to be in state, they could have been complete strangers, they could have been anyone. Justice Sonia Sotomayor, of the United States Supreme court, explained it best: the law “deputizes the state’s citizens as bounty hunters, offering them cash prizes for civilly prosecuting their neighbors’ medical procedures.”

Some anti-abortion groups even created websites where people could post anonymous reports on people who had abortions, or people who provided abortions. A majority of those who were affected were youths, people of color, and people with low incomes. Make no mistake, these bans were attacks against the working class. All abortion bans are.

More often than not, these bans affect the most vulnerable before they attack anyone else. Having 10,000 dollar fines awaiting those who aid in getting someone an abortion is criminal. Abortion bans are criminal.

STATES PROTECTING THE RIGHT TO ABORTION

But there is hope. In 2022, Kansas citizens voted against a ballot initiative that would’ve blocked constitutional protections for abortion rights. Instead, people voted that, as defended in *Hodes & Nauser v. Schmidt*, that the right to an abortion is contained within the Bill of Rights.

Kentucky did something similar, wherein voters rejected a ballot initiative that would have stripped protections for abortion from the constitution. Although this does not codify the right to an abortion in the state, it does offer some protections, sources a Ballotpedia article on the initiative.

Other states, like California, Washington, Oregon, Minnesota, Illinois, Maryland, Hawaii, New Jersey, New York, Connecticut, and Vermont, all have protections in place that guarantee the right to an abortion. This information comes from the Center for Reproductive Rights.

California recognized the right to an abortion even before Roe v. Wade came into effect. Additionally, after Roe v. Wade fell, citizens of the state approved of an initiative that added reproductive rights to the state constitution, including abortion and contraceptive rights. Washington, Oregon, and Connecticut all have state laws that protect abortion. Minnesota has a statutory right to abortion as of this year, while also protecting the right to an abortion under the constitution. Illinois has abortion rights codified until viability, and this was put into law before Roe was reversed. Additionally, the Illinois Supreme Court reaffirmed abortion rights within the state constitution. Maryland offers legal protections for abortions. Hawaii legalized abortions, similar to California, before Roe v Wade was ever heard, and has since furthered laws that protect the right to an abortion. New Jersey added protections in 2022 for the right to an abortion as a fundamental one for all individuals. New York added legislation to protect abortion rights in 2019 and 2022 that not just protects access to abortion for the individual, but for those who aid in getting people access to abortions. Vermont created legislation in 2019 to further protect abortion rights, and in 2022, an initiative was passed that ensured that reproductive rights would be within the constitution.

Those are just the states that have expanded access to abortion.

Some states, like Nevada, Colorado, Michigan, Massachusetts, and Rhode Island, among others, have protected the right to an abortion. Delaware has also legalized abortion, in addition to having a shield law that protects abortion providers.

ABORTION LAWS AROUND THE GLOBE

Outside of the United States, there are wide varieties of abortion protections. The United Kingdom offers abortion protections under the Human Fertilisation and Embryology Act of 1990 that only limits abortion to twenty four weeks for “risk of injury to the physical or mental health of any existing children of the family” and “risk of injury to the physical or mental health” of the person bearing the child. All other reasons for abortion have no term limit.

Colombia offers abortion upon request until the twenty fourth week of pregnancy, and offers exemptions later on in the pregnancy for medical reasons or instances of rape.

New Zealand offers blanket abortion protections before twenty weeks, but after twenty weeks, abortions must “consult at least one other qualified health practitioner” and “have regard to: all relevant legal, professional, and ethical standards to which the qualified health practitioner is subject; the person’s physical health, mental health, and overall well being; [and] the gestational age of the fetus.”

India has protected abortion up to 24 weeks, as of 2022, for all individuals, not just married individuals. In India, abortion was legal since 1971, and 2021 amendments included “married women who were divorced or widowed, minors, rape victims or mentally ill women,” and 2022 amendments included single women, states PBS.

Mexico recently in September of 2023 decriminalized abortion nationwide. The Supreme Court eliminated all penalties against abortion, declaring it unconstitutional and a violation of women’s rights.

Countries that ban abortion completely or nearly completely include Malta, Egypt, where abortion is only given an exception when necessary to save the life of the person giving birth, and the Philippines.

WHAT CAN WE DO?

We're fighting to keep abortion protected, safe, and accessible. So let's talk about taking action.

Donating for abortion funds is one great way to expand access and support existing abortion providers. [This link](#) allows for people to donate to these funds through a compilation of different grassroots organizations. Abortion funds are support networks that go towards pregnant individuals who are seeking abortions. These funds are especially necessary for individuals who could not otherwise pay for abortions.

The most important thing we can do to prevent new bans, or fight existing restrictions, is to vote! Lawmakers are the people who have the power to legislate abortion, and we can utilize our votes to prevent pro-forced-birth lawmakers from taking power. Other ways that people can participate in the fight for abortion rights justice are engaging in ballot initiatives. By canvassing, campaigning, and putting boots on the ground to get out into your community, you can gather support for these initiatives. In states that are fighting to get abortion on the ballot, people need to volunteer for campaigns that are getting these petitions signed, and in states that will have abortion on the ballot, people need to go into their communities and gather support for the initiative.

We can win the fight for abortion access! We've done it before, and we'll use the power of democracy to do it again.

SOURCES

<https://time.com/6190996/how-abortion-funds-work/>

<https://reproductiverights.org/maps/abortion-laws-by-state/>

[Florida Ballot Initiative to Protect Abortion](#)

<https://www.aclu.org/cases/gainesville-woman-care-llc-v-state-florida>

<https://www.aclu.org/press-releases/floridas-15-week-abortion-ban-heads-state-supreme-court>

<https://reproductiverights.org/maps/state/florida/>

<https://www.cnn.com/2023/05/02/health/florida-abortion-term-pregnancy/index.html>

<https://apnews.com/article/ohio-abortion-rights-constitutional-amendment-special-election-227cde039f8d51723612878525164f1a>

<https://ohiocapitaljournal.com/2023/08/14/november-vote-could-give-ohio-among-the-strongest-abortion-protections-in-the-region/>

<https://www.cbsnews.com/news/texas-abortion-law-bounty-hunters-citizens/>

<https://www.texastribune.org/2022/12/15/texas-maternal-mortality-report/>

<https://www.aclutx.org/en/press-releases/us-supreme-court-review-texas-abortion-ban>

SOURCES

<https://time.com/6190996/how-abortion-funds-work/>

<https://reproductiverights.org/maps/abortion-laws-by-state/>

[Florida Ballot Initiative to Protect Abortion](#)

<https://www.aclu.org/cases/gainesville-woman-care-llc-v-state-florida>

<https://www.aclu.org/press-releases/floridas-15-week-abortion-ban-heads-state-supreme-court>

<https://reproductiverights.org/maps/state/florida/>

<https://www.cnn.com/2023/05/02/health/florida-abortion-term-pregnancy/index.html>

<https://apnews.com/article/ohio-abortion-rights-constitutional-amendment-special-election-227cde039f8d51723612878525164f1a>

<https://ohiocapitaljournal.com/2023/08/14/november-vote-could-give-ohio-among-the-strongest-abortion-protections-in-the-region/>

<https://www.cbsnews.com/news/texas-abortion-law-bounty-hunters-citizens/>

<https://www.texastribune.org/2022/12/15/texas-maternal-mortality-report/>

<https://www.aclutx.org/en/press-releases/us-supreme-court-review-texas-abortion-ban>